

By: Bell of Kaufman, Buckley, VanDeaver,  
Landgraf, Talarico, et al.

H.B. No. 4402

Substitute the following for H.B. No. 4402:

By: Buckley

C.S.H.B. No. 4402

A BILL TO BE ENTITLED

AN ACT

relating to the administration of certain assessment instruments,  
the accountability rating system for assessing campus and district  
performance, and an extracurricular and cocurricular allotment  
under the Foundation School Program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 39.023(e), (h), and (o), Education  
Code, are amended to read as follows:

(e) Under rules adopted by the State Board of Education,  
every ~~third~~ year, the agency shall release the questions and  
answer keys to each assessment instrument administered under  
Subsection (a), (b), (c), (d), or (l), excluding any assessment  
instrument administered to a student for the purpose of retaking  
the assessment instrument, after the last time the instrument is  
administered for that school year. To ensure a valid bank of  
questions for use each year, the agency is not required to release a  
question that is being field-tested and was not used to compute the  
student's score on the instrument. The agency shall also release,  
under board rule, each question that is no longer being  
field-tested and that was not used to compute a student's score.

~~[During the 2014-2015 and 2015-2016 school years, the agency shall  
release the questions and answer keys to assessment instruments as  
described by this subsection each year.]~~

(h) The agency shall notify school districts and campuses of

1 the results of assessment instruments administered under this  
2 section not later than the 21st day after the last date on which the  
3 assessment instrument may be ~~[is]~~ administered, except that the  
4 agency may delay the notification if necessary to maintain validity  
5 and reliability standards. The school district shall disclose to  
6 each district teacher the results of assessment instruments  
7 administered to students taught by the teacher in the subject for  
8 the school year in which the assessment instrument is administered.

9 (o) The agency shall adopt or develop optional interim  
10 assessment instruments for each subject or course for each grade  
11 level for which a through-year assessment instrument under Section  
12 39.0236 is not required ~~[subject to assessment under this section]~~.

13 A school district or open-enrollment charter school may not be  
14 required to administer interim assessment instruments adopted or  
15 developed under this subsection. An interim assessment instrument:

16 (1) must be:

17 (A) when possible, predictive of the assessment  
18 instrument for the applicable subject or course for that grade  
19 level required under this section; and

20 (B) administered electronically; and

21 (2) may not be used for accountability purposes.

22 SECTION 2. Subchapter B, Chapter 39, Education Code, is  
23 amended by adding Section 39.02342 to read as follows:

24 Sec. 39.02342. PAPER ADMINISTRATION OF ASSESSMENT  
25 INSTRUMENTS ON REQUEST. (a) Subject to Subsection (c), a school  
26 district shall administer an assessment instrument required under  
27 Section 39.023(a), (c), or (l) in paper format to any student whose

parent or guardian requests the assessment instrument be administered to the student in paper format.

(b) A request for the administration of an assessment instrument in paper format to a student under this section must be submitted to the school district not later than December 1 of the school year in which the assessment instrument will be administered.

(c) The number of students enrolled at a school district who are administered an assessment instrument in paper format for any single administration under this section may not exceed one percent of the number of students enrolled in the district. On receipt of more requests for administration of an assessment instrument than the maximum number permitted under this subsection, the district shall accept the requests in the order received until the maximum number is reached.

SECTION 3. Section 39.0236, Education Code, is amended to read as follows:

Sec. 39.0236. THROUGH-YEAR ~~[INTEGRATED]~~ FORMATIVE ASSESSMENT ~~[PILOT]~~ PROGRAM. (a) Notwithstanding any other law and except as otherwise provided by commissioner rule, beginning with the 2027-2028 school year, the agency shall adopt or develop a through-year assessment for each subject and grade for which an assessment instrument is required under Section 39.023(a) or (c), including a through-year assessment in Spanish for administration to emergent bilingual students, as required under Section 39.023(1), for each subject and grade level for which an assessment instrument in Spanish may be administered under that subsection. A

through-year assessment adopted or developed under this section shall consist of the administration of not fewer than three assessment instruments over the course of a school year ~~[The agency shall establish a pilot program in which participating school districts administer to students integrated formative assessment instruments for subjects or courses for a grade level subject to assessment under Section 28.006 or 39.023].~~

(b) The agency shall develop and implement a plan to transition each assessment instrument required under Sections 39.023(a), (c), and (1) to a through-year assessment instrument beginning with the 2027-2028 school year. The plan must:

(1) evaluate the administration of through-year assessment instruments in this state, including an analysis of instructional support improvements provided by school districts administering through-year assessment instruments; and

(2) identify the actions necessary to improve the administration of through-year assessment instruments, including necessary changes to state law or policy ~~[A school district may elect to participate in the pilot program].~~

(c) The agency may require a school district to:

(1) participate in a pilot program for the administration of through-year assessment instruments to district students; and

(2) report information to the agency regarding the implementation of through-year assessment instruments under this section ~~[A school district's participation in the pilot program does not affect the district's obligations regarding the~~

~~administration of assessment instruments required under Section 39.023].~~

(d) The score on a through-year assessment instrument administered to a student in grades three through eight shall be calculated as a summative score of each instrument administered during the school year as part of the through-year assessment. The commissioner shall adopt rules regarding the relative weights that must be given to each individual assessment instrument administered as part of the through-year assessment ~~[Not later than December 1 of each even-numbered year, the agency shall submit to the governor, the lieutenant governor, and the members of the legislature a report on the pilot program that includes:~~

~~[(1) an analysis of whether the administration of integrated formative assessment instruments under the pilot program provided any improvement in instructional support during the preceding two school years; and~~

~~[(2) a determination of the feasibility of replacing the assessment instruments required under Section 39.023 with integrated formative assessment instruments].~~

SECTION 4. Section 39.053, Education Code, is amended by amending Subsections (c) and (c-2) and adding Subsections (c-4) and (c-5) to read as follows:

(c) School districts and campuses must be evaluated based on three domains of indicators of achievement adopted under this section that include:

(1) in the student achievement domain, indicators of student achievement that must include:

(A) for evaluating the performance of districts and campuses generally:

(i) an indicator that accounts for the results of assessment instruments required under Sections 39.023(a), (c), and (l), as applicable for the district and campus, ~~[including the results of assessment instruments required for graduation retaken by a student,]~~ aggregated across grade levels by subject area, including:

(a) for the performance standard determined by the commissioner under Section 39.0241(a), the percentage of students who performed satisfactorily on the assessment instruments, aggregated across grade levels by subject area; and

(b) for the college readiness performance standard as determined under Section 39.0241, the percentage of students who performed satisfactorily on the assessment instruments, aggregated across grade levels by subject area; ~~and~~

(ii) an indicator that accounts for the results of assessment instruments required under Section 39.023(b), as applicable for the district and campus, including the percentage of students who performed satisfactorily on the assessment instruments, as determined by the performance standard adopted by the agency, aggregated across grade levels by subject area;

(iii) an indicator that accounts for extracurricular and cocurricular student success in accordance

1 with Section 39.0533;

2 (iv) an indicator that accounts for student  
3 and parent satisfaction in accordance with Section 39.0534; and

4 (v) an indicator that accounts for middle  
5 school student success in accelerated mathematics; and

6 (B) for evaluating the performance of high school  
7 campuses and districts that include high school campuses,  
8 indicators that account for:

9 (i) students who satisfy the Texas Success  
10 Initiative (TSI) college readiness benchmarks prescribed by the  
11 Texas Higher Education Coordinating Board under Section 51.334 on  
12 an assessment instrument in reading or mathematics designated by  
13 the coordinating board under that section;

14 (ii) students who satisfy relevant  
15 performance standards on advanced placement tests or similar  
16 assessments;

17 (iii) students who earn dual course credits  
18 in the dual credit courses;

19 (iv) students who enlist in the armed  
20 forces of the United States or the Texas National Guard;

21 (v) students who earn industry  
22 certifications;

23 (vi) students admitted into postsecondary  
24 industry certification programs that require as a prerequisite for  
25 entrance successful performance at the secondary level;

26 (vii) students whose successful completion  
27 of a course or courses under Section 28.014 indicates the student's

1 preparation to enroll and succeed, without remediation, in an  
2 entry-level general education course for a baccalaureate degree or  
3 associate degree;

4 (viii) students who successfully met  
5 standards on a composite of indicators that through research  
6 indicates the student's preparation to enroll and succeed, without  
7 remediation, in an entry-level general education course for a  
8 baccalaureate degree or associate degree;

9 (ix) high school graduation rates, computed  
10 in accordance with standards and definitions adopted in compliance  
11 with the Every Student Succeeds Act (20 U.S.C. Section 6301 et seq.)  
12 subject to the exclusions provided by Subsections (g), (g-1),  
13 (g-2), (g-3), and (g-4);

14 (x) students who successfully completed an  
15 OnRamps dual enrollment course;

16 (xi) students who successfully completed a  
17 practicum or internship approved by the State Board of Education;

18 (xii) students who are awarded an associate  
19 degree; and

20 (xiii) students who successfully completed  
21 a program of study in career and technical education;

22 (2) in the school progress domain, indicators for  
23 effectiveness in promoting student learning, which must include:

24 (A) for assessment instruments, including  
25 assessment instruments under Subdivisions (1)(A)(i) and (ii), the  
26 percentage of students who met the standard for improvement, as  
27 determined by the commissioner; and

(B) for evaluating relative performance, the performance of districts and campuses compared to similar districts or campuses; and

(3) in the closing the gaps domain, the use of disaggregated data to demonstrate the differentials among students from different racial and ethnic groups and [7] socioeconomic backgrounds~~[, and other factors, including:~~

~~[(A) students formerly receiving special education services;~~

~~[(B) students continuously enrolled; and~~

~~[(C) students who are mobile].~~

(c-2) The commissioner by rule shall determine a method by which a student's performance may be included in determining the performance rating of a school district or campus under Section 39.054 if, before the student graduates, the student~~[~~

~~[(1)]~~ satisfies the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Texas Higher Education Coordinating Board under Section 51.334 on an assessment instrument designated by the coordinating board under that section ~~[, or~~

~~[(2) performs satisfactorily on an assessment instrument under Section 39.023(c), notwithstanding Subsection (d) of this section].~~

(c-4) Notwithstanding any other provision of this section, an indicator adopted under Subsection (c) may not be included in determining the performance rating of a school district or campus under Section 39.054 unless it has been determined to be valid and

1 reliable by the commissioner and through a peer review process.

2 (c-5) In calculating the performance of a campus providing  
3 instruction in grades three through eight in the student  
4 achievement domain under Subsection (c)(1):

5 (1) indicators adopted under Subsections (c)(1)(A)(i)  
6 and (ii) may not collectively contribute more than 80 percent of the  
7 score assigned to the campus; and

8 (2) indicators adopted under Subsections  
9 (c)(1)(A)(iii), (iv), and (v) may not collectively contribute more  
10 than 20 percent of the score assigned to the campus.

11 SECTION 5. Sections 39.0533(a), (b), and (c), Education  
12 Code, are amended to read as follows:

13 (a) Beginning with the 2027-2028 school year, the [The]  
14 commissioner shall [study the feasibility of incorporating] adopt  
15 for evaluating school district and campus performance under this  
16 subchapter an indicator that accounts for student participation in  
17 extracurricular and cocurricular activities as provided by Section  
18 39.053(c)(1)(A)(iii) [student activity].

19 (b) In adopting an indicator under Subsection (a), the  
20 commissioner may [If the commissioner determines that an  
21 extracurricular and cocurricular student activity indicator is  
22 appropriate, the commissioner may adopt the indicator.

23 ~~[(b) To determine the feasibility of adopting an indicator~~  
24 ~~under this section, the commissioner may]~~ require a school district  
25 or campus to:

26 (1) participate in a pilot program implementing an  
27 indicator under Subsection (a); or

1           (2) implement components of and report requested  
2 information necessary to develop and implement an indicator under  
3 Subsection (a) [~~relating to extracurricular and cocurricular~~  
4 ~~student activity~~].

5           (c) The commissioner shall [~~may~~] establish an advisory  
6 committee to assist in developing and [~~determining the feasibility~~  
7 ~~of~~] incorporating the [~~an extracurricular and cocurricular student~~  
8 ~~activity~~] indicator under Subsection (a) [~~for evaluating school~~  
9 ~~district and campus performance~~].

10           SECTION 6. Subchapter C, Chapter 39, Education Code, is  
11 amended by adding Sections 39.0534 and 39.0547 to read as follows:

12           Sec. 39.0534. STUDENT AND PARENT SATISFACTION INDICATORS.

13           (a) Before the beginning of the 2027-2028 school year, the  
14 commissioner shall adopt for the evaluation of school district and  
15 campus performance under this subchapter indicators that account  
16 for student and parent satisfaction as provided by Section  
17 39.053(c)(1)(A)(iv) as measured by a survey conducted by a school  
18 district.

19           (b) In adopting an indicator under Subsection (a), the  
20 commissioner may require a school district or campus to:

21                   (1) participate in a pilot program implementing an  
22 indicator under Subsection (a); or

23                   (2) implement components and report requested  
24 information relating to student and parent satisfaction necessary  
25 to implement an indicator required by this section.

26           (c) The commissioner shall establish an advisory committee  
27 to assist in developing and adopting the indicators required by

1 this section.

2 (d) A school district may not conduct a survey of student or  
3 parent satisfaction for purposes of measuring student or parent  
4 satisfaction under this section unless the State Board of Education  
5 first approves the content of the survey.

6 Sec. 39.0547. LOCAL ACCOUNTABILITY SYSTEM GRANT PROGRAM.  
7 From money appropriated for that purpose, the agency shall provide  
8 grants to school districts and open-enrollment charter schools for  
9 the planning and implementation of local accountability systems  
10 under Section 39.0544.

11 SECTION 7. Subchapter C, Chapter 48, Education Code, is  
12 amended by adding Section 48.116 to read as follows:

13 Sec. 48.116. EXTRACURRICULAR AND COCURRICULAR ALLOTMENT. A  
14 school district is entitled to an annual allotment for each student  
15 in average daily attendance equal to the basic allotment, or, if  
16 applicable, the sum of the basic allotment and the allotment under  
17 Section 48.101 to which the district is entitled, multiplied by  
18 .003.

19 SECTION 8. Sections 39.023(g) and 39.0533(d) and (e),  
20 Education Code, are repealed.

21 SECTION 9. This Act applies beginning with the 2023-2024  
22 school year.

23 SECTION 10. (a) Except as provided by Subsection (b) of this  
24 section, this Act takes effect immediately if it receives a vote of  
25 two-thirds of all the members elected to each house, as provided by  
26 Section 39, Article III, Texas Constitution. If this Act does not  
27 receive the vote necessary for immediate effect, this Act takes

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1 effect September 1, 2023.

2 (b) Section 48.116, Education Code, as added by this Act,  
3 takes effect September 1, 2023.